

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the record compiled to date and the parties' arguments, the Board finds and concludes:

Claimant worked part-time as a shift supervisor in respondent's Augusta, Kansas, sandwich shop. According to claimant, she worked Monday through Friday from 9 a.m. through 2 p.m., which included the busy lunch period.

In December 2005, claimant began experiencing symptoms in her arms while at work lifting bread pans, which she believed weighed approximately 10 pounds. Claimant initially experienced right wrist and arm pain. But she later developed left wrist pain after she began using her left hand to remove the pans from the oven. Claimant characterized her job duties tending the bread pans and making sandwiches as repetitive:

I go into work, and I would take the bread out of the proofer, and they are pretty heavy pans, and I would grab one pan with each hand and put them on the table and prepare it like I am supposed to. Then I would, if a customer comes in, you just go and make their sandwich and ring them up, then do more bread, lift. I was doing a lot of twisting and grabbing and pulling with both of my arms. That is about it.¹

Claimant reported her symptoms to her supervisor, who advised claimant not to lift anything and that respondent would accommodate her.

On December 14, 2005, claimant consulted her personal physician, Dr. Michael Wilson. The doctor concluded claimant's bilateral hand pain and occasional paresthesias was mild carpal tunnel. On December 19, 2005, Dr. Wilson restricted claimant from working.

After seeing Dr. Wilson several times, respondent and its insurance carrier requested Dr. James L. Gluck to see claimant. Consequently, on January 19, 2006, claimant saw Dr. Gluck and he also restricted claimant from working. Consequently, claimant has not worked anywhere since December 19, 2005.

When claimant saw Dr. Wilson in December 2005, she told the doctor that she played the piano a lot and believed that activity was contributing to her symptoms. Accordingly, respondent and its insurance carrier argue that claimant's upper extremity symptoms are more probably related to playing the piano rather than her work. Dr. Wilson, however, noted in his January 5, 2006, records that claimant's job duties were

¹ P.H. Trans. at 12-13.

exacerbating her symptoms and, most likely, the cause of her bilateral carpal tunnel syndrome. The doctor's January 5, 2006, notes read, in part:

Netta [claimant] comes in to discuss her carpal tunnel syndrome. She has been having symptoms of carpal tunnel now for approximately one month. She is unable to work, as she is needing to wear wrist splints at all times. She works in a fast food restaurant. She cannot perform her job duties while wearing her splints and her job duties are exacerbating the problem and most likely are the reason why she has the carpal tunnel in the first place.²

In addition, claimant testified that before she began having the symptoms in her wrists she played the piano at church and at home for approximately two hours per week. But she stopped playing the piano in early December 2005 when she began experiencing wrist pain.

Dr. Gluck's opinion is interesting. Following his initial visit with claimant in January 2006, the doctor concluded claimant's symptoms were related to her repetitive hand activity at work. But following receipt of a letter from an insurance claims representative that stated claimant played the piano seriously for the last five years and that her job was not repetitive, Dr. Gluck decided claimant's work may have affected some of claimant's symptoms but they primarily resulted from playing the piano. In addition, Dr. Gluck also concluded the symptoms that claimant presented to him were different from those presented to Dr. Wilson as claimant did not state that she had numbness or paresthesias until she was asked.

Judge Barnes observed claimant testify and ruled in her favor. Accordingly, there is an implicit finding that claimant was credible. Reviewing this record, the Board likewise concludes that claimant has established that it is more probably true than not that her bilateral upper extremity symptoms were either caused or aggravated by her work activities. Consequently, claimant is entitled to receive workers compensation benefits. In short, the April 5, 2006, Order should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.³

WHEREFORE, the Board affirms the April 5, 2006, preliminary hearing Order entered by Judge Barnes.

² *Id.*, Cl. Ex. 1.

³ K.S.A. 44-534a(a)(2).

IT IS SO ORDERED.

Dated this ____ day of June, 2006.

BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant
Patricia A. Wohlford, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director